



US Army Corps
of Engineers

Construction Bulletin

No. 95-4 Issuing Office: CEMP-CP Issue Date: 2/9/95 Exp. Date: 31 DEC 97

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Subject: Land Disposal Restrictions-Phase II

Applicability: Information

1. References:

a. Environmental Protection Agency 40 CFR Part 268 "Land Disposal Restrictions Phase II--- Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Waste and Newly Listed Wastes" Final Rule published September 19, 1994 Vol. 59 Federal Register (FR) 47982-48110.

b. CEMRD-EP-E Fact Sheet 95-01 titled "Land Disposal Restrictions-Phase II Universal Treatment Standards Final Rule" dated 14 December 1994 by Mr. Richard Waples.

2. PURPOSE. The purpose of this Construction Bulletin is to bring to your attention major changes promulgated by the Environmental Protection Agency (EPA) under the Land Disposal Restrictions (LDR) program and the impact of these changes on USACE activities that involve treatment, storage, transportation and disposal of hazardous wastes. The LDR Phase II Rule is promulgated under the authority of the Hazardous and Solid Waste Amendments (HSWA) of 1984. The rule became effective on 19 December 1994 in states and territories regardless of whether the state is or is not Resource Conservation and Recovery Act (RCRA) authorized.

3. BACKGROUND. The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal; meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no-migration test. A no-migration disposal unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. The LDR Phase II Rule modifies the existing land disposal restrictions. These modifications reflect EPA's updated technical knowledge and provide greater programmatic consistency.

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4. SUMMARY OF CHANGES.

a. Consolidated Treatment Tables. EPA has eliminated the need to check three different tables to determine the appropriate treatment standard for a specific hazardous waste code. EPA has consolidated three treatment standard tables (40 CFR 268.41, 268.42 Table 2, and 268.43) into one new table "Treatment Standards for Hazardous Waste"- 40 CFR 268.40.

b. Application of Universal Treatment Standards (UTS). EPA has promulgated under this new rule a set of UTS as provided in table 268.48 of the referenced CFR. The UTS are an attempt by EPA to establish uniform treatment standards for all wastes and mixtures of waste, regardless of the waste code(s). EPA has initially identified 216 underlying hazardous constituents and established concentration standards for the wastewater and nonwastewater categories. When waste displays the characteristics of ignitability (D001), or corrosivity (D002), or toxicity (D012-D043), UTS may be triggered. The generator must determine and treat for the underlying hazardous constituents reasonably expected to be present above UTS. Treatment of the hazardous characteristic (D001, D002, D012-D043) will no longer be sufficient to ensure compliance with LDR.

c. Additional Analysis. During waste characterization, the generator will have to continue to determine if the waste is characteristic. If the hazardous waste is characteristic for D001, D002, and/or D012-D043, the generator may need to test the waste for underlying hazardous constituents. EPA will continue to permit generator "knowledge of the waste" in lieu of actual chemical analyses to determine if the waste is restricted from land disposal (268.7); however, EPA does not have clear regulatory guidance on what constitutes generator "knowledge". EPA requires evidence that demonstrates that the knowledge used is sufficiently accurate to characterize the waste. EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication (SW-846), update number 1, Table 2-1, establishes the appropriate analytical method(s) for analyzing the underlying hazardous constituents. It is estimated that the cost for determining underlying constituents may be approximately \$5000 per sample. There are options to avoid the expensive chemical analyses costs. For example, if the waste is an ignitable waste (D001) only, testing for underlying hazardous constituents can be avoided through use of combustion for the treatment method (40 CFR 268.40). Another alternative is to require the D001, D002, and D012-D043 wastes to be treated for all underlying hazardous constituents rather than to determine whether some of the underlying hazardous constituents are present.

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d. Modification to LDR Notification and Recordkeeping Requirements. EPA is modifying the notification requirements by deleting the requirement that generators identify the treatment standard and/or reference the applicable treatment table on the LDR notification. This is replaced by the following:

(1) Generators shall identify applicable waste codes. If a hazardous waste is both listed and characteristic, the listed waste code will govern for the purposes of the LDR notification only. This statement is true only if the treatment standard for the listed waste identifies and includes a treatment for the constituent(s) that caused the waste to exhibit the characteristic waste code.

(2) Generators shall identify if the waste is a nonwastewater or wastewater. The waste identification shall include any applicable subcategories (e.g. high TOC, reactive cyanide).

(3) Generators shall identify the underlying hazardous constituents for D001, D002, and D012-D043 on the notification; otherwise, the treatment, storage, and disposal facility (TSDF) will be required to treat for all 216 underlying hazardous constituents.

(4) Generators shall continue to identify the regulated waste constituents on the LDR notification for listed wastes F001-F005, and F039; otherwise the TSDF will be required to treat for all the constituents applicable to the waste code. The remaining listed wastes are not permitted to limit the monitoring requirements for any identified regulated constituents specific for the given waste code.

The revisions to the LDR Recordkeeping, Notification and/or Certification requirements will necessitate that the generator verify the state requirements and assure compliance with both federal as well as state regulations. This is particularly necessary when the state has implemented and rewritten its own regulations rather than just referencing RCRA regulations. In this case, the state may have stricter and/or additional requirements.

e. Revisions to Alternative Lab Pack Treatment Rules. To assist the regulated community, EPA is taking a simplified approach to the alternative treatment standard for lab packs (40 CFR 268.42(c)). Rather than listing the numerous wastes that qualify for the alternative standard, EPA revised the regulations to list the few wastes which cannot be treated using this provision.

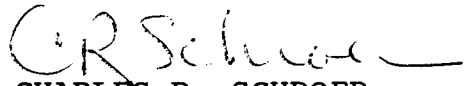
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5. IMPLEMENTATION.

a. Construction field personnel responsible for the administration of HTRW projects which involve the treatment, storage, transportation and disposal of hazardous waste must contact the responsible design district to determine the impact of the EPA's revisions.

b. Due to the different types, terms and conditions of ongoing contracts and the varied impact of the new rules on such contracts, Construction personnel are advised to seek the advice of their local office of counsel when determining if compensation is due to the contractor as a result of the revisions.

6. This Construction Bulletin was coordinated with the following HQUSACE organizations: Environmental Restoration Division (CEMP-RT); Office of the Chief Counsel (CECC-C); Office of the Principal Assistant Responsible for Contracting (CEPR); and Operations, Construction, and Readiness Division (CECW-O).


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P.S. The information contained in this construction bulletin was mainly extracted from reference 1b. However, if you would like to obtain a copy of the CEMRD-ET-E Fact Sheet you may contact Mr. Waples at (402)697-2560.